

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern District of Florida on the following

☒ Trademarks or ☐ Patents. (☐ the patent action involves 35 U.S.C. § 292.):

DOCKET NO. 4:11-cv-50-SPM-WCS	DATE FILED 2/2/2011	U.S. DISTRICT COURT Northern District of Florida
PLAINTIFF ELVIS PRESLEY ENTERPRISES INC, et al		DEFENDANT BUD GLASS PRODUCTIONS, et al
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 3,740,775		
2 2,957,346		*** See attached complaint ***
3 2,831,918		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2		*** See attached complaint ***	
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK JESSICA J. LYUBLANOVITS	(BY) DEPUTY CLERK <i>[Signature]</i>	DATE 2/24/2011
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF FLORIDA
3 DIVISION TALLAHASSEE

4 C.A. NO.

5 ELVIS PRESLEY
6 ENTERPRISES, INC. and ELVIS
PRESLEY ENTERPRISES, LLC

7 Plaintiffs,

8 v.

9 BUD GLASS PRODUCTIONS and
10 BUD GLASS, Individually and as officer,
11 director, employee and shareholder of
BUD GLASS PRODUCTIONS INC.

12 Defendants.

4:11cv50-SPM/WCS

13 COMPLAINT

14 This is an action for infringement of a federally registered trademark, for
15 copyright infringement under Section 106 of the Copyright Act of 1976, Title 17, United
16 States Code, for federal unfair competition and false endorsement/designation of origin
17 under the Lanham Act, *inter alia*, 15, U.S.C. §§ 1114, 1125(a) and 1125(c), and for
18 common law trademark infringement.
19

20 PARTIES

21
22 1. Plaintiff, Elvis Presley Enterprises, Inc ("EPE INC" and together with
23 EPE LLC as "Plaintiffs") is a Tennessee Corporation having a principal place of business
24 at 3734 Elvis Presley Boulevard, Memphis, Tennessee.

25
26 2. Plaintiff, Elvis Presley Enterprises, LLC ("EPE LLC" and together with
27 EPE INC as "Plaintiffs") is a Delaware Corporation having a principal place of business
28

Gallant &
Irvin, LLC
One Olde
North Rd.,
Suite 103
Helmsford
VA 01824

Filed 02/02/11 USDC Fln 401032

Rec'd 02/02/11 USDC Fln 10123

KM 1

MUS

1 at 3734 Elvis Presley Boulevard, Memphis, Tennessee.

2 3. Upon information and belief, Defendant, Bud Glass Productions ("BGP"
3 and collectively with Bud Glass as "Defendants"), is a Florida company, fictitious name
4 or d/b/a with a principal place of business at P.O. Box 180187, Tallahassee Florida.
5

6 4. Upon information and belief, Defendant, Bud Glass ("Glass" and
7 collectively with BGP as "Defendants") is an individual with an address of 3237
8 Connector Drive, Tallahassee, Florida, and is an officer, director, shareholder, owner,
9 proprietor and operator of BGP.

10 JURISDICTION AND VENUE

11 5. This Court has original jurisdiction over this matter pursuant to 15 U.S.C.
12 §1121, 17 U.S.C. §101, 28 U.S.C. § 1338, 28 U.S.C. § 1331, and 28 U.S.C. § 1332. The
13 Court also has pendent jurisdiction over all state law claims pursuant to 28 U.S.C. §
14 1367.
15

16 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b).

17 FACTS COMMON TO ALL COUNTS

18 Overview

19
20 7. The nature of this action concerns Defendants' wilful engagement in
21 infringing activity consisting of the manufacture, distribution, marketing, promotion and sale
22 of a CD/DVD box set entitled '*Elvis 77 - The Final Curtain*,' (hereinafter the "Infringing
23 Product" or "Infringing Products") one component of which is a DVD containing a copy of a
24 TV program entitled: "Elvis in Concert" and also known as "the CBS Special." Plaintiffs
25 own the copyright in the CBS Special, which originally aired on the CBS television network
26 in 1977 after Mr. Presley's death and featured one of the last performances of Elvis Presley's
27
28

1 career. Annexed hereto as Exhibit "1" is the copyright registration for the CBS Special.
2 (Hovey Dec. at 28).

3 8. The Infringing Product is not authorized by Plaintiffs and wrongfully uses
4 copyrighted material of Plaintiffs, trademarks owned by Plaintiffs, and also infringes
5 upon other rights owned and controlled by Plaintiffs. (Hovey Dec. at 30).
6

7 9. None of the Defendants have ever sought or obtained a license or any
8 other authorization from Plaintiffs in order to manufacture, produce, distribute, promote,
9 market and sell the Infringing Product. (Hovey Dec. at 31).

10 10. The Plaintiffs have actively marketed and sold the Infringing Product
11 within numerous geographical territories, including the State of Florida.
12

13 **EPE INC. and EPE LLC**

14 11. Elvis Aaron Presley ("Elvis") is one of the most widely recognized, if not
15 the most recognized musical performer and entertainer of all time. Since his untimely
16 death on August 16, 1977 his fame and iconic status have only grown and the valuable
17 intellectual property rights associated with him and his performances have only increased
18 in value. (See Declaration of Gary Hovey, Executive Vice President, Elvis Presley
19 Enterprises LLC, filed concomitantly herewith at 3. References hereafter will be
20 designated as "Hovey Dec. at ____").
21

22 12. After Elvis Presley's death at his Graceland home, his last will and
23 testament dated March 3 1977 appointed his father, Vernon Presley, as executor and
24 trustee of a residuary trust (the "Residuary Trust"). (Hovey Dec. at 4) In Item IV of his
25 will, and after payment of all debts, expenses and taxes, Elvis left "all the rest, residue,
26 and remainder of [his] estate, including all lapsed legacies and devices, and any property
27
28

1 over which [he had] a power of appointment" to the Residuary Trust. (Hovey Dec. at 4).

2 13. The beneficiaries of the Residuary Trust were his father, Elvis'
3 grandmother Minnie Mae Presley, and his nine year old daughter Lisa Marie Presley.
4 (Hovey Dec. at 5) After his father's death in 1979, Elvis' former wife Priscilla Presley
5 was named as one of three trustees along with the National Bank of Commerce in
6 Memphis, which was the bank Elvis and his father had done business with, and Joseph
7 Hanks, who had been Elvis and his father's accountant for a number of years. (Hovey
8 Dec. at 5) With the passing of Elvis' grandmother in 1980, his daughter Lisa Marie
9 became the only surviving beneficiary named in Elvis' will. (Hovey Dec. at 5).

10
11 14. In 1981, the co-executors and co-trustees of the will and the Elvis Presley
12 Residuary Trust transferred and assigned all right, title and interest in and to the name,
13 likeness and image of Elvis Presley and trademarks related to Elvis Presley to EPE INC.
14 by an assignment dated as of September 18, 1981, and recorded with the United States
15 Patent and Trademark Office on February 10, 1984. EPE INC. was thereafter the
16 corporate entity tasked with conducting the business of the Elvis Presley estate, including
17 the operations of Graceland in Memphis, Tennessee, and managing its assets. (Hovey
18 Dec. at 6).

19
20 15. On January 29, 1993, after reaching the age of majority but before the
21 termination of the Residuary Trust, Lisa Marie Presley, as trustor or settlor, entered into
22 an agreement with her mother, Priscilla Presley and the National Bank of Commerce, as
23 co-trustees, in Memphis, Tennessee creating a revocable, inter vivos trust known as the
24 Promenade Trust, a grantor trust under the laws of the State of Tennessee, United States
25 of America (the "Promenade Trust"). (Hovey Dec. at 7).

1 16. By an assignment executed on February 2, 1993 but effective from
2 February 1, 1993, made by the co-trustees of the Residuary Trust, the Residuary Trust
3 assigned all of its assets, including all intangible intellectual property rights that it owned
4 throughout the world, to the Promenade Trust. Such assets included copyrights in and to
5 songs recorded by Elvis Presley and audiovisual material of Elvis Presley (Hovey Dec. at
6 8).
7

8 17. In February 2005, the media and entertainment company CKX, Inc.
9 acquired an 85% interest in EPE INC. (Hovey Dec. at 9) Prior to consummation of the
10 acquisition by CKX, Inc of its 85% share in EPE INC in February 2005, the Promenade
11 Trust transferred Elvis Presley assets and businesses not owned by EPE INC to a newly
12 incorporated limited liability company, EPE LLC which is also a subsidiary of CKX, Inc.
13 (Hovey Dec. at 10) The Promenade Trust continues to own 15% of the outstanding
14 equity interests of EPE INC and 15% of the outstanding membership interests of EPE
15 LLC. (Hovey Dec. at 10) Collectively these entities own and control the trademarks,
16 copyrights, rights of publicity and other intellectual property rights in and to Elvis
17 Presley. (Hovey Dec. at 10).
18
19

20 18. EPE INC and EPE LLC's business extends far beyond the Graceland
21 operation. (Hovey Dec. at 12). It includes worldwide licensing of Elvis-related
22 merchandise, products and services together with the development, marketing and sale of
23 Elvis-related music, film, video, television and stage productions, the ongoing
24 development of an Internet presence, the management of significant music publishing
25 assets and more. (Hovey Dec. at 12).
26

27 19. In addition, EPE INC is the owner several federal trademark registrations
28

1 for "Elvis Presley" and "Elvis" registration nos. 3740775, 2831918, and 2957346 related
2 to entertainment services, including but not limited to live musical concerts, theatre
3 productions, production of television, movies, and music videos, DVDs, related film
4 clips, photographs and other multi-media materials and picture books. The Registrations
5 are listed on the Principal Register with the United States Patent and Trademark office
6 and are collectively annexed hereto as Exhibit "2." (Hovey Dec. at 13).

8 **The CBS Special**

9 20. "Elvis in Concert," often referred to as "the CBS Special" is a TV special
10 starring Elvis Presley. It was Elvis' third and final TV special, following "Elvis" (aka
11 "The '68 Comeback Special") and "Aloha From Hawaii." It was filmed during Elvis
12 Presley's final tour in the cities of Omaha, Nebraska, on June 19, 1977 (the "Omaha
13 Concert"), and Rapid City, South Dakota, on June 21, 1977 (the "Rapid City Concert").
14 It was shown on CBS on October 3, 1977, two months after Elvis Presley died. (Hovey
15 Dec. at 14).

17 21. Plaintiffs have never released the entire CBS Special for sale or hire in any
18 format. Over the years there has been a very substantial interest in a commercial release
19 of the entire CBS Special, the Omaha Concert and the Rapid City Concert, but EPE LLC
20 has no plans to release it for sale. (Hovey Dec. at 15).

22 22. Plaintiffs' position on this matter is described as follows on the official Elvis
23 website at <http://www.elvis.com/about-the-king/faq.aspx>:
24

25 *"What is the status of the TV special "Elvis in Concert" (1977)? Will it ever be*
26 *released?*
27
28

1 *This special and its related footage are owned by EPE. The 1977 television special*
2 *"Elvis in Concert," which was shot during Elvis' last concert tour in June of 1977*
3 *(not actually the last concert itself as Vernon Presley indicated in a statement at the*
4 *end of the special), aired a couple of times on network television and parts of it, and*
5 *additional footage shot during the production of it, have been used in various*
6 *television and video documentary projects over the years. However, much to the*
7 *disappointment of a number of fans, we have no plans for releasing on DVD at this*
8 *time.*

10 *Because of the severity of Elvis' health problems at the time the special was shot,*
11 *Elvis was far from his best in the way he looked and the way he performed, though*
12 *there are some truly brilliant moments in the footage. The true fans look at this*
13 *through the eyes of love, respect and understanding, and see the great historical*
14 *value - as do all the members of our staff. But, this not so with much of the general*
15 *public and the media. It's not that we don't want the fans to have this footage or that*
16 *we don't know how much it would mean to them. We do. There just simply is no way*
17 *to get it only to the real fans (and we've exhausted all kinds of ideas) without also*
18 *having Elvis served up to the general public and press for ridicule. They already*
19 *emphasize and exaggerate the tragedy and sadness of the last years of his life too*
20 *much. Right now, the emphasis for us is to remind them of all that came before."*

22 23. Accordingly, all examples of the CBS Special in circulation are therefore
23 infringing copies of the CBS Special. (Hovey Dec. at 16).

24 **EPE LLC'S COPYRIGHT OWNERSHIP OF THE CBS SPECIAL**

26 24. On April 14, 1977 CBS Television Network made an offer to Elvis
27
28

1 Presley's manager, Colonel Tom Parker, for Elvis to appear in a 60 minute television
2 special. Paragraph 1 of the offer provided that the ownership of the CBS Special would
3 be jointly owned by Elvis Presley and All Star Shows, a trading name used by Colonel
4 Tom Parker. (Hovey Dec. at 17). Furthermore, the agreement stated that "all footage
5 taped and not used in [the CBS Special] shall belong jointly to Mr. Presley and All Star
6 Shows. (Hovey Dec. at 17). This would include raw footage from the Omaha Concert
7 and the Rapid City Concert.
8

9 25. As stated in Paragraph 12 above, the last will and testament of Elvis
10 Presley dated March 3, 1977 created the Residuary Estate into which Elvis left his estate.
11 (Hovey Dec. at 18).
12

13 26. As stated in Paragraph 15 above in February 1993 the co-trustees of the
14 Residuary Trust assigned all of its assets, including all intangible intellectual property
15 rights that it owned throughout the world, to the Promenade Trust. (Hovey Dec. at 19).
16

17 27. On February 7, 2005 the Promenade Trust executed an assignment to EPE
18 LLC of 100% of its rights, title and interest in various copyright works including the CBS
19 Special. (Hovey Dec. at 20).

20 28. Accordingly, EPE LLC is the copyright owner of Elvis Presley's original
21 rights in the CBS Special. In fact, EPE LLC is also the owner of the share originally
22 owned by All Stars Shows, through a separate chain of title summarized as follows.
23 (Hovey Dec. at 21).
24

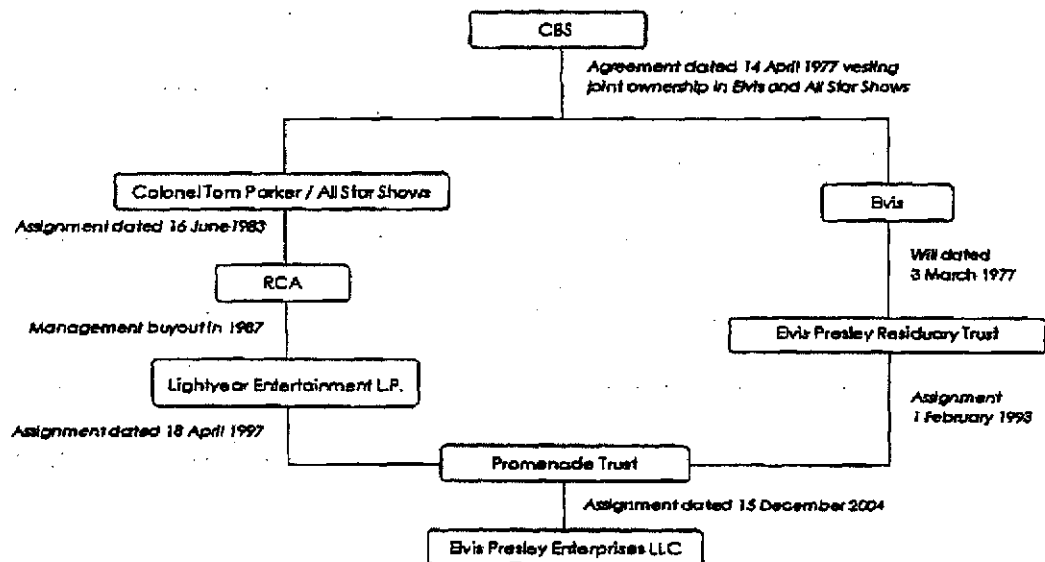
25 29. On June 16, 1983 Colonel Tom Parker entered into a Purchase Agreement
26 with RCA Corporation under which he sold all of his rights, title and interest in various
27 property held by him, including any rights owned by All Star Shows in and to the CBS
28

1 Special. Subsequently, RCA's rights were acquired by a company by the name of
2 Lightyear Entertainment, L.P. Specifically, RCA Video Productions, Inc. was the subject
3 of a management buyout shortly after RCA was sold to General Electric. The vehicle
4 used for the management buyout was Lightyear Entertainment, L.P. (Hovey Dec. at 22).

6 30. On April 18, 1997 Lightyear Entertainment L.P. executed an assignment
7 of copyright and transfer of various rights held by it to the Promenade Trust including its
8 rights in the CBS Special. (Hovey Dec. at 23).

10 31. As set out in Paragraph 17 above on February 7, 2005 the Promenade
11 Trust executed an assignment to EPE LLC of 100% of its rights, title and interest in
12 various copyright works including the CBS Special. (Hovey Dec. at 24).

14 32. For ease of reference set out below is a diagram flow chart of the passage
15 of 100% of the copyright in the CBS Special from CBS to EPE LLC:



26 33. As previously stated, the CBS Special has never been released by Plaintiffs.

1 Any copies which are on the internet or being offered for sale anywhere in the world are
2 therefore infringing. Plaintiffs have and continue to take commercially reasonable actions
3 whenever they learn that the CBS Special is being offered for sale as a DVD version and they
4 have taken action to remove hundreds of video clips featuring the CBS Special from
5 YouTube. (Hovey Dec. at 26).

6
7 **Defendant's Unauthorized Sale of the Infringing Product**

8 34. Upon information and belief, the Defendants have been manufacturing,
9 producing, distributing, marketing and promoting and selling the Infringing Products without
10 a license, and the Infringing Products manufactured, distributed, marketed, promoted and
11 sold by the Defendants constitute copyright infringement of Plaintiffs' copyrighted and
12 protected works, and further violate Plaintiff's trademark rights.

13
14 35. Specifically, in or around September 7, 2010, Defendants sent out a
15 broadcast email to Undisclosed-Recipients@yahoo.com the subject of which was "Press
16 Release: Boxcar 'Elvis 77' New Trailer" containing the following admonition in bold
17 type: **"PLEASE KEEP THIS E-MAIL STRICTLY BETWEEN US, AND DO NOT
18 FORWARD IT TO ANYONE. THIS IS VERY IMPORTANT IF YOU WISH TO
19 SEE THIS BECOME A REALITY."** The email further contains detailed information
20 about the 6 DVD/6 CD box set containing audio recordings, concert footage and other
21 video footage of Elvis, which Defendants readily admit contains "unreleased footage and
22 new complete soundboards. However due to security issues, further contents of the box
23 cannot be revealed." A true copy of the September 7, 2010 email is annexed hereto as
24 Exhibit "3." The email makes manifest Defendants attempts to conceal their illicit
25 activities.
26
27
28

1 36. The email, as well as the Infringing Product illegally utilizes the Elvis and
2 Elvis Presley trademarks and specifically offers for sale live musical concerts DVDs,
3 related film clips, photographs and other multi-media materials and picture books which
4 are governed by trademark registrations owned and controlled by Plaintiffs.

5
6 37. Moreover, at least three of the DVD's in the box set contain copyrighted
7 video footage owned by Plaintiffs and for which Defendants have never received
8 authorization to copy, manufacture, distribute and sell, and therefore, the actions of
9 Defendants constitute willful acts of copyright infringement as well.

10 38. Accordingly, having obtained a copy of Defendants email, Plaintiffs
11 retained intellectual property investigators to commence an investigation into the
12 activities of the Defendants. On or about October 18, 2010, Plaintiffs investigators
13 directed an email to: bglass@nettally.com inquiring as to the Infringing Product and
14 received a response email from Defendants that same day. A true copy of the email string
15 of communications is annexed to the Declaration of Investigator Brittnei Popp, see also
16 Popp Dec. at 3.

17
18 39. On October 19, 2010 the investigators sent an additional email to
19 Defendants and received a response on October 25, 2010. (Popp Dec. at 4). On November
20 1, 2010 the investigators and the Defendants exchanged multiple emails to address
21 concerns raised by the Defendants that they did not recognize the email address of the
22 investigators and demanded confirmation as to how the investigators had learned about
23 the Infringing Product or who had referred them to Defendants. (Popp Dec. at 4)
24 Specifically, Defendants stated: "please send me the person's name and their e-mail and I
25 will look in my 'sent' box." (Popp Dec. at 4).
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1 40. Later that day on November 1, 2010 the investigator supplied the
2 requested email address. (Popp Dec. at 5) Thereafter on November 8, 2010 the
3 Defendant forwarded to the investigator the same broadcast email Plaintiffs obtained
4 bearing the date September 7, 2010. (Popp Dec. at 5) After receipt of this email, the
5 investigator sent multiple emails to the Defendants on November 10, 2010, November 15,
6 2010 and November 16, 2010 inquiring into purchasing the Infringing Product. (Popp
7 Dec. at 6).

9 41. On November 16, 2010 the investigator received a response from the
10 Defendants requesting that they direct a money order payable to "Bud Glass" c/o P.O.
11 Box 180187, Tallahassee, Florida. (Popp Dec. at 7).

13 42. On November 29, 2010 the investigator's sent a money order to the
14 Defendants in the amount of \$365.00. (Popp Dec. at 8). On December 10, 2010 the
15 investigator's inquired as to the status of the purchase and was informed by the
16 Defendants that "have not received it yet. The box is not released yet . . . should be the
17 end of the month. I will send you as soon as it comes in." (Popp Dec. at 9).

19 43. On December 17, 2010 the investigators received an additional detailed
20 email from the Defendants describing the Infringing Product specifically referencing the
21 performances which were contained on the multiple DVDs including the CBS Special.
22 (Popp Dec. at 10).

23 44. On January 3, 2011 the investigator directed an additional email to the
24 Defendants inquiring as to the status of the order for the Infringing Product. (Popp Dec. at
25 11). On January 4, 2011 the Defendants responded "should know something soon."
26 (Popp Dec. at 11).

1 45. On January 11, 2011 the investigators directed an additional email
2 concerning the status of the order for the Infringing Product and received the following
3 response from the Defendants "I am still awaiting word on the shipment of the box set to
4 me from overseas. When I get them or at least hear something I will let you know."
5 (Popp Dec. at 12). Thereafter on January 18, 2011 the investigators received an email
6 from Defendants stating: "Box sets will be in this week! Will ship yours as soon as they
7 get here." (Popp Dec. at 13).

9 46. On January 19, 2011 the investigators received the following broadcast
10 email from the Defendants: "The Final Curtain-77' Box Set was sent to you today,
11 priority mail/ signature required. Please let me know when it comes in. YOU ARE
12 GONNA LOVE THIS!!!" (Popp Dec. at 14). On January 24, 2011 the investigators
13 received the Infringing Product from the Defendants, which package indicated it had been
14 shipped from Bud Glass, P.O. Box 180187 Tallahassee, Florida. (Popp Dec. at 15).

16 47. The Infringing Product is being manufactured, distributed, marketed,
17 promoted, advertised and sold by the Defendants, do not have their origin with any of the
18 Plaintiffs, have not been licensed or authorized by Plaintiffs, are being sold under
19 trademarks belonging to Plaintiffs such that the consuming public is being misled as to
20 the source, sponsorship and origin of the goods and further are products which comprise
21 unauthorized copies of Plaintiffs' copyrighted materials.

23 48. The Defendants' manufacture, promotion, advertisement, distribution,
24 marketing, and sale of the Infringing Products and other goods, constitutes trademark
25 infringement, copyright infringement, unfair competition, false endorsement, false
26 designation of origin under the Lanham Act, and trademark counterfeiting.
27
28

COUNT I

(Infringement of a Federally Registered Trademark)

49. The Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1-48 and incorporate each herein by reference.

50. EPE INC is the owner several federal trademark registrations for "Elvis Presley" and "Elvis" registration nos. 3740775, 2831918, and 2957346 related to entertainment services, including but not limited to live musical concerts, theatre productions, production of television, movies, and music videos, DVDs, related film clips, photographs and other multi-media materials and picture books. The Registrations are listed on the Principal Register with the United States Patent and Trademark office.

51. The Defendants are using in commerce, without the Plaintiffs' consent, a reproduction, counterfeit, copy, or colorable imitation of Plaintiffs' registered marks on the Infringing Product.

52. The Defendants use of the Plaintiffs' registered trademarks is likely to cause confusion and is in fact causing confusion, in violation of 15 U.S.C. § 1114(1) (a).

53. Purchasers are likely to purchase the Defendants' Infringing Product bearing the Plaintiffs' trademarks believing they are Plaintiffs' authorized products.

54. The Plaintiffs have no control over the quality of the Infringing Products sold by the Defendants and because of the confusion as to the source engendered by such sale, the Plaintiffs' valuable goodwill in respect to their registered trademarks are being irreparably harmed. This is compounded by the fact that Plaintiffs copyrighted material is included in the Infringing Product.

1 55. The use by the Defendants of the Plaintiffs' registered marks on their
2 Infringing Product has caused confusion and mistake and deception of purchasers as to
3 the source of origin of its items that falsely suggest that their Infringing Product is
4 sponsored by, licensed by or otherwise affiliated with the Plaintiffs. These actions
5 constitute trademark infringement and are in violation of, inter alia 15 U.S.C. § 1114(a).

7 56. The infringement by the Defendants has been willful and deliberate,
8 designed specifically to trade upon the enormous goodwill associated with Plaintiffs'
9 registered trademarks.

10 57. The goodwill of the Plaintiffs' business under their respective trademarks
11 is of enormous value, and the Plaintiffs will suffer irreparable harm should infringement
12 be allowed to continue to the detriment of their trade reputation and goodwill.

14 58. By reason of Defendants' violation of 15 U.S.C. § 1114, Plaintiffs have
15 sustained and will sustain substantial injury, loss and damage. Defendants' activities
16 entitle Plaintiffs to recover their actual damages and Defendants' profits in an amount to
17 be proven at trial, together with their attorneys' fees and costs.

19 59. Plaintiffs further have no adequate remedy at law available and are
20 suffering and will continue to suffer irreparable harm and damages as a result of the
21 aforesaid acts of the Defendants, unless an ex-parte seizure order is granted as well as a
22 temporary restraining order such that the Defendants are enjoined and restrained from the
23 manufacture, distribution, advertisement, marketing, promotion and sale of the Infringing
24 Product.
25

Gallant &
Irvin, LLC
One Olde
North Rd.,
Suite 103
Chelmsford
MA 01824

Count II

(Copyright Infringement under 17 U.S.C. §501)

60. The Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1- 59 and incorporate each herein by reference.

61. EPE LLC is the owner of 100% of the copyright in the CBS Special and is further the copyright holder for the additional concert footage set forth in the DVD's, which include the Omaha Concert and the Rapid City Concert, comprising the Defendants' Infringing Product. EPE LLC holds copyright registration number PAu00545679 for the CBS Special, a copy of which is annexed hereto as Exhibit "4."

62. Upon information and belief, within the past year, in this District and in other locations in the United States and its territories, Defendants manufactured, caused to be manufactured, and/or authorized others to manufacture in the United States and elsewhere in the world for sale within the United States, DVDs comprising Plaintiffs' copyrighted subject matter. The Infringing Product is available for inspection by the Court.

63. Upon information and belief, within the past year, in this District and in other locations in the United States and its territories, Defendants advertised, promoted, sold and distributed the Infringing Product to the public, and/or authorized others to advertise, promote, sell and distribute the Infringing Product to the public in the United States and elsewhere in the world.

64. Defendants' acts complained of herein have been done without any of the Plaintiffs' agreement or consent, and said acts constitute acts of copyright infringement under 17 U.S.C. § 501.

1 70. Over the years, the Plaintiffs have expended considerable resources in
2 establishing their trademarks in the minds of customers as a source of high quality
3 products. The Plaintiffs are well known throughout the United States as the exclusive
4 source of products bearing the Elvis and Elvis Presley trademarks.

5
6 71. The use by the Defendants of the Plaintiffs' registered trademarks on the
7 Infringing Product is likely to cause confusion or mistake or deception to the consuming
8 public as to the source of origin of those goods.

9
10 72. Purchasers are likely to purchase the Defendants' Infringing Products
11 bearing the Plaintiffs' trademarks believing they are Plaintiffs' authorized products,
12 which they are not.

13 73. The Plaintiffs have no control over the quality of the goods sold and
14 because of the confusion as to the source engendered by the Defendants, their valuable
15 goodwill in respect to their trademarks is being and will continue to be irreparably
16 harmed.

17
18 74. The use by the Defendants of the Plaintiffs registered trademarks on their
19 Infringing Products has caused confusion and mistake and deception of purchasers as to
20 the source of origin of the goods which falsely suggests that the Defendants' Infringing
21 Products are sponsored by, licensed by or otherwise affiliated with the Plaintiffs. These
22 actions constitute unfair competition and are in violation of, inter alia 15 U.S.C. § 1125.

23 75. The acts of unfair competition by the Defendants have been willful and
24 deliberate, designed specifically to trade upon the enormous goodwill associated with
25 Plaintiffs' trademarks.
26
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76. The goodwill of the Plaintiffs under their registered trademarks are of enormous value, and the Plaintiffs are suffering and will continue to suffer irreparable harm should infringement be allowed to continue to the detriment of their trade reputation and goodwill.

77. By reason of Defendants' violation of 15 U.S.C. § 1125, Plaintiffs have sustained and will sustain substantial injury, loss and damage. Defendants' activities entitle Plaintiffs to recover their actual damages and Defendants' profits in an amount to be proven at trial, together with their attorneys' fees and costs.

78. Plaintiffs have no adequate remedy at law available and are suffering and will continue to suffer irreparable harm and damages as a result of the aforesaid acts of the Defendants, unless the Defendants are enjoined and restrained from the manufacture, distribution, advertisement and sale of their Disputed Products.

COUNT IV
(FALSE ENDORSEMENT/FALSE DESIGNATION OR ORIGIN LANHAM ACT, 15
U.S.C. § 1125)

79. The Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1-78 and incorporate each herein by reference.

80. Defendants have used the Plaintiffs' trademarks, including their logos, name, image and persona, in connection with the promotion and sale of goods and services in commerce. Such use has misled and deceived, and will continue to mislead and deceive, the public into believing that the Defendants and their commercial activities are in some way endorsed, sanctioned by, or otherwise affiliated with the Plaintiffs in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125. In addition, Defendants have misrepresented the values, qualities, characteristics and origin of their goods,

1 services and commercial activities in violation of Section 43(a) of the Lanham Act, 15
2 U.S.C. § 1125.

3 81. By reason of Defendants' violation of 15 U.S.C. § 1125, Plaintiffs have
4 sustained and will sustain substantial injury, loss and damage. Defendants' activities
5 entitle Plaintiffs to recover their actual damages and Defendants' profits in an amount to
6 be proven at trial, together with their attorneys' fees and costs.

7
8 82. Furthermore, Plaintiffs are entitled to a preliminary and permanent
9 injunction to prevent future violations of 15 U.S.C. § 1125.

10
11 **COUNT V**
(Trademark Counterfeiting Sections 32-35 of the Lanham Act, 15 U.S.C. §§ 1114-17)

12 83. Plaintiffs repeat and re-allege each and every allegation contained in
13 Paragraphs 1 through 82 as if fully set forth herein.

14 84. Defendants are well aware of the popularity of licensed DVD's, film
15 footage and other licensed and authorized merchandise sold by Plaintiffs under their
16 trademarks, including their logos, name, images and persona, and of the goodwill
17 represented by the Plaintiffs' trademarks, including their logos, names, image and
18 persona.

19
20 85. Notwithstanding such knowledge, and without the consent of the Plaintiffs
21 or their licensors, Defendants engaged in a scheme to manufacture, sell, offer for sale,
22 distribute and advertise the Infringing Products bearing Plaintiffs' trademarks and other
23 protected intellectual property. In furtherance of this scheme, Defendants have
24 manufactured, distributed and sold the Infringing Products that include federally
25

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1 registered trademarks owned by Plaintiffs and that generally simulate the trade dress of
2 products licensed or authorized by Plaintiffs.

3 86. The quality of Defendants Infringing Products is vastly inferior to genuine
4 licensed products of the Plaintiffs.

5 87. Defendants have caused the Infringing Products to be placed into interstate
6 commerce, distributing and selling said counterfeit products to the public as and for
7 genuine products licensed, authorized or otherwise approved of by the Plaintiffs or their
8 licensors in violation of the Lanham Act, 15 U.S.C. §§1114-17.

9 88. The manufacture, sale, offering for sale and/or distribution by Defendants
10 of the Infringing Product bearing counterfeits of Plaintiffs' trademarks and/or the use by
11 Defendants of counterfeits of Plaintiffs' trademarks in connection with the sale of the
12 Infringing Product is likely to cause confusion and mistake and to deceive consumers as
13 to the source, origin or sponsor of said Infringing Product.

14 89. By reason of Defendants' violation of 15 U.S.C. §§ 1114-17, Plaintiffs
15 have sustained and will sustain substantial injury, loss and damage. Defendants'
16 activities entitle Plaintiffs to recover their actual damages and Defendants' profits in an
17 amount to be proven at trial, together with their attorneys' fees and costs.

18 90. Furthermore, Plaintiffs are entitled to a preliminary and permanent
19 injunction to prevent future violations of 15 U.S.C. §§ 1114-17.

20
21
22
23 **COUNT VI**
24 ***(Trademark Dilution (Federal Trademark Dilution Act, 15 U.S.C. §1125(c))***

25 91. The Plaintiffs repeat and re-allege each and every allegation contained in
26 Paragraphs 1 through 96 as if fully set forth herein.
27
28

1 92. Plaintiffs' trademarks, including their logos, names, images and persona,
2 are extremely famous and recognizable trademarks used in interstate commerce in the
3 United States. Among other things: (a) they have a high degree of distinctiveness; (b)
4 they have in some instances been used for decades throughout the United States to
5 promote many goods and services; (c) Plaintiffs and their authorized licensees have
6 advertised and publicized Plaintiffs' trademarks in some instances for decades throughout
7 the United States; (d) Plaintiffs have used these trademarks in a trading area of broad
8 geographical scope encompassing all of the state and territories of the United States; (e)
9 Plaintiffs' trademarks are among the preeminent marks in professional entertainment
10 among a broad category of products; (f) Plaintiffs' trademarks have an extremely high
11 degree of recognition among consumers; and (g) there are no trademarks similar to those
12 of Plaintiffs in use to any extent by third parties except as licensed by Plaintiffs.
13

14 93. Defendants' conduct described above is likely to dilute and detract from
15 the distinctiveness of Plaintiffs' famous trademarks with consequent damage to Plaintiffs,
16 and to the substantial business and goodwill symbolized by Plaintiffs' trademarks, in
17 violation of the Federal Trademark Dilution Act, 15 U.S.C. § 1125(c).
18

19 94. Defendants' conduct has been undertaken with a willful intent to trade on
20 the Plaintiffs' reputation and to cause dilution of Plaintiffs' trademarks and this conduct
21 entitles Plaintiffs to damages and the other remedies available pursuant to 15 U.S.C. §
22 1125(c)(2).
23

24 95. Furthermore, Plaintiffs are entitled to a preliminary and permanent
25 injunction to prevent future violations of 15 U.S.C. §1125(c).
26
27
28

COUNT VII

(Common Law Trade Mark Infringement)

96. The Plaintiffs repeat and re-allege each and every allegation contained in Paragraphs 1 -95 and incorporates each herein by reference.

97. The Plaintiffs' use of their trademarks, including their logos, names, images and persona, and of the goodwill represented by the Plaintiffs' trademarks, including their logos, names, images and persona has been sufficiently extensive so that members of the public on seeing the Defendants' use of the Plaintiffs trademarks, including their logos, names, images and persona, and of the goodwill represented by the Plaintiffs' trademarks, including their logos, names, images and persona, are actually being deceived or confused and others will likely be deceived or confused and believe that the Defendants' Infringing Product has their origins with Plaintiffs or are sponsored by or affiliated with Plaintiffs.

98. Plaintiffs have no adequate remedy at law and are suffering and unless the Defendants are enjoined will continue to suffer irreparable harm and damage as a result of the aforesaid unlawful acts.

99. The wrongful acts as set forth above have caused Plaintiffs to suffer and will continue to cause Plaintiffs to suffer damages in an amount to be determined by the trier of fact.

100. These actions constitute infringement of Plaintiffs' common law trademark rights.

1
2 **PRAYERS FOR RELIEF**

3 WHEREFORE, the Plaintiffs demand relief as follows:

- 4 A. That the Court grant an ex-parte order authorizing the immediate seizure of
5 any and all Infringing Products and any and all other materials directly and/or
6 indirectly related thereto in the possession, custody or control of the
7 Defendants;¹
8
9 B. That the Court enter an order preliminarily before trial and permanently after
10 trial restraining and enjoining Defendants, their agents, servants, and
11 employees, and all persons in active concert and participation with them,
12 from engaging in any further acts of copyright infringement by infringing any
13 of the Plaintiffs' copyrighted works by causing to be manufactured,
14 distributed and sold any unauthorized copies of same or any derivative copies
15 which are substantial similar to the Plaintiffs' copyrighted works;
16
17 C. That the Court enter an order preliminarily before trial and permanently after
18 trial restraining and enjoining Defendants, their agents, servants, and
19 employees, and all persons in active concert and participation with them,
20 from using, exploiting, publishing, distributing, copying, advertising or
21 transmitting in any form Plaintiffs' trademarks, and the likeness and
22 photographs of Elvis Presley;
23
24 D. That the Court enter an order preliminarily before trial ordering Defendants
25 to escrow any and all proceeds, monies, drafts, accounts or monies of any
26

27 ¹ The Plaintiffs have duly notified the United States Attorney of its intentions to seek an
28 ex-parte seizure order as required under 15 U.S.C. §1116 (d) (2). A copy of the Notice
Letter is attached hereto and incorporated herein by reference as Exhibit "5."

1 kind due or to become due on account of or in any manner related to the
2 manufacture, sale, advertising and distribution of any Infringing Products.

3 E. That the Court enter an order after hearing declaring that Defendants: (1)
4 have no right to use, exploit, publish, distribute, copy, advertise or transmit in
5 any form Plaintiffs' trademarks; (2) have infringed Plaintiffs copyrights; (3)
6 are using in commerce, without the Plaintiffs' consent, a reproduction,
7 counterfeit, copy, or colorable imitation of Plaintiffs' registered trademarks;
8 (4) use of the Plaintiffs' registered trademarks is likely to cause confusion
9 and is in fact causing confusion, in violation of 15 U.S.C. § 1114(1) (a); (5)
10 willfully and deliberately engaged in unfair competition by using trademarks
11 and other protected intellectual property of Plaintiffs; (6) that said use was a
12 false designation of origin which tended to falsely represent that Defendants
13 Infringing Products were supplied by, sponsored by or were affiliated with
14 the Plaintiffs; and (7) have violated the Lanham Act, Federal Trademark
15 Dilution Act, and Florida Statute 540.08.

16
17
18 F. That the Court enter an order awarding Plaintiffs all damages that they have
19 sustained as a consequence of Defendants' acts complained of herein,
20 including (but not limited to) any authorized statutory damages for unfair
21 competition, trademark infringement, willful infringement, and false
22 designation of origin and false endorsement, as well as treble damages where
23 permitted;

24
25 G. That the Court enter an order requiring Defendants to pay to Plaintiffs all the
26 gains, profits, savings, and advantages realized by Defendants by reasons of
27
28

1 their acts complained of herein, and trebling the amount of such profits to be
2 paid by Defendants to Plaintiffs as permitted;

3 H. Under the Copyright Act order: 1) an accounting by Defendants, and each of
4 them, of all gains, profits and advantages derived by them from their
5 infringement of the above-identified copyrights pursuant to 17 U.S.C.
6 §504(b); 2) enter judgment against the Defendants for actual damages
7 pursuant to 17 U.S.C. §504 (b); 3) or statutory damages pursuant to 17 U.S.C.
8 §504(c), including damages awardable on a finding that the above
9 infringement was committed willfully; and 4) award Plaintiffs' costs and
10 reasonable attorneys' fees pursuant to 17 U.S.C. §505;

11
12 I. Awarding Plaintiffs punitive damages in an amount sufficient to deter other
13 and future similar conduct by Defendants and others;

14 J. Awarding Plaintiffs the costs of this suit, including reasonable attorneys' fees
15 and expenses;

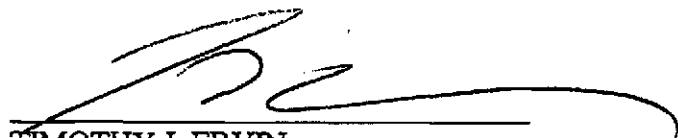
16 K. Awarding Plaintiffs prejudgment interest;

17 L. Ordering the seizure and transfer to Plaintiffs of all Infringing Products and
18 goods bearing Plaintiffs' trademarks or other protectable intellectual property
19 and an award for the destruction of same; and
20

21 M. Granting Plaintiffs such other and further relief as the Court may deem just.
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1 Respectfully submitted,
2 ELVIS PRESLEY ENTERPRISES, INC.
3 ELVIS PRESLEY ENTERPRISES, LLC
4 By its attorneys,

5 

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